



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

September 21, 1961

Honorable James A. Doherty Opinion No. WW-1151
County Attorney
San Augustine County
San Augustine, Texas

Re: Whether a County Commissioner is authorized to announce his candidacy or in fact become a candidate for the office of County Judge without first resigning his present office as Commissioner.

Dear Mr. Doherty:

Your request for an opinion states that Commissioner E. H. Warr, Precinct 2, San Augustine County, wants to become a candidate for the office of County Judge in the next Democratic party primary which is to be held on the first Saturday in May, 1962. You state further that he was last elected as Commissioner in the November 1958 General Election, and his present term expires on December 31, 1962. In view of the foregoing circumstances you ask:

Whether County Commissioner E. H. Warr, is authorized to announce his candidacy or in fact become a candidate for the office of County Judge without first resigning his present office as Commissioner.

The answer to this question is resolved by a provision in Section 65 of Article XVI of the Texas Constitution, which was added by an amendment proposed by the Legislature in 1957 and adopted in 1958. This provision reads as follows:

"Provided, however, if any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the

office then held, at any time when the unexpired term of the office then held shall exceed one (1) year, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled." (Emphasis added)

This amendment forbids certain named officials, including County Commissioners, from announcing or becoming a candidate in General, Special, or Primary elections, for any office of profit or trust at any time when the unexpired term exceeds one year. Such announcement or candidacy constitutes an automatic resignation of the office then held.

Therefore, should Mr. Warr announce or become such candidate before January 1, 1962, he would vacate his present office; such action after January 1, would not encounter the constitutional ban.

S U M M A R Y

A County Commissioner is authorized by Section 65, Article XVI of the Texas Constitution, as amended 1958, to announce his candidacy or in fact become a candidate for the office of County Judge without first resigning his present office provided that at the date of his announcement his unexpired term of office does not exceed one year.

Yours very truly,

WILL WILSON
Attorney General of Texas

By *I. Raymond Williams, Jr.*
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Assistant

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Honorable James A. Doherty, Page 3 (WW-1151)

APPROVED:

OPINION COMMITTEE
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H. Grady Chandler
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REVIEWED FOR THE ATTORNEY GENERAL

BY: Houghton Brownlee, Jr.